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Supreme Court, U.S.  
FILED

DEC 14 1987

JOSEPH F. SPANIOL, JR.  
CLERK

No \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, \_\_\_\_\_

JOHN GAGLIARDI,  
Petitioner

VS

DONALD E. ZIEGLER AND  
CATHERINE MARTRANO  
Respondents

Petition for writ of certiorari  
to the United States Court of Appeals  
for the Third Circuit

John Gagliardi  
191 Wall Road  
Clairton, PA 15025  
(412) 233-7172

3482

This case presents one question for review:

In this case was it error for Donald E. Ziegler, a judge of the United States District Court for the Western District of Pennsylvania, to dismiss by memorandum opinion the complaint of a pro se litigant, John Gagliardi as frivolous, when Judge Ziegler was the principal defendant in that case? Your Petitioner suggests that the answer to this question is in the affirmative.

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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT

To the honorable, the Chief Justice and  
the Associate Justices of the said Court:

John Gagliardi, Petitioner herein, prays  
that a writ of certiorari issue to review  
the judgment of the United States Court of  
Appeals for the Third Circuit entered in  
the instant case on July 30, 1987.

OPINIONS BELOW

The memorandum opinion of the United  
States District Court for the Western  
District of Pennsylvania, Ziegler, J. which  
was dated March 3, 1987, and was  
unreported, is attached hereto in the

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appendix. The judgment of the United States Court of Appeals for the Third Circuit, entered July 30, 1987, was attached hereto in the Appendix. The order of the United States Court of Appeals for the Third Circuit sur Petition for Rehearing which was dated September 15, 1987, is placed in the appendix hereto.

#### JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered July 30, 1987. A timely Petition for Rehearing was filed by the Appellant, John Gagliardi, and was denied by the United States Court of Appeals for the Third Circuit on September 15, 1987.

At this time, the jurisdiction of the Supreme Court of the United States is



invoked under the provisions governing Petitions for writs of certiorari from the Courts of Appeals, 28 U.S.C. 1254(1), as well as under the all-writs act, 28 USC 1651, which empowers the court to enter any orders in aid of its jurisdiction, which statutory provisions are believed by the Petitioner to confer on the Supreme Court jurisdiction to entertain this Petition for writ of certiorari.

#### QUESTION PRESENTED

This case presents one question for review: In this case was it error for Donald E. Ziegler, a judge of the United States District Court for the Western District of Pennsylvania, to dismiss by memorandum opinion the complaint of a pro-se litigant, John Gagliardi as frivolous, when Judge Ziegler was the principal defendant in that case?



Your Petitioner suggests that the answer to this question is in the affirmative.

#### THE STATUTE INVOLVED

The statute involved is 28 USC 455(a) and 455(b)(5)(i).

28 USC 455(a) provides:

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 USC 455(b)(5) provides:

He shall also disqualify himself in the following circumstances: (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party;

#### STATEMENT OF THE CASE

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

CHICAGO, ILL.

SEPTEMBER 1934

PROFESSOR J. H. JOHNSON

1000 UNIVERSITY AVENUE

CHICAGO, ILL.

DEAR SIR:

I have the pleasure to inform you that

your letter of the 28th inst. has been received.

The work on the subject of the

theoretical aspects of the

problem of the structure of the

crystal lattice has been completed.

The results of the work are

being prepared for publication.

I am sure that you will find the

results of interest.

I am, Sir, very respectfully,

Yours very truly,

J. H. JOHNSON

—

JOHNSON, J. H.

This is the case of an American Citizen, John Gagliardi, who has determined to proceed in his legal cases as a pro se litigant as a result of the problems he has had in the past with licensed members of the bar, and the problems Gagliardi has encountered at the hands of one Donald E. Ziegler, a Judge of the United States District Court for the Western District of Pennsylvania, and the determination of that member of the District Court to foreclose the right of John Gagliardi to proceed as a pro se litigant and deprive John Gagliardi of his right of access to the courts of the United States of America.

John Gagliardi is an adult male and a longtime resident of Western Pennsylvania. John Gagliardi is a successful businessman, who has been involved in the welding and fabricating business and who has also





operated a large and successful warehousing business in Jefferson Borough, Clairton, PA. John Gagliardi is a husband and father, and a respected member of the community in the Clairton, PA area.

John Gagliardi is no stranger to the courts and is not in the main an unsuccessful litigant. John Gagliardi, and a company in which he has an interest, US Industrial Fabricators, Inc, have obtained a large settlement in the past against America's largest corporate monopoly, the Bell System, and its component Western Electric. Following the case with the Bell System, John Gagliardi had other troubles with the Bell System and turned to his attorneys for help, only to find that they were unavailable to help him against the Bell System since these attorneys were now attorneys for the Bell System themselves! Gagliardi was aware of vast and staggering



amounts of fraud within the Bell System and sought as a member of the ratepaying public and as a citizen to expose some of the wrongdoing, corruption, and fraud which accompanies the operation of the greatest monopoly in American History. Gagliardi then went to the Federal authorities and sought to enlist them for help, only to find that certain members of the office of the United States Attorney for the Western District of Pennsylvania had themselves been involved in the interest of the Bell System.

As a result of the frustrating experience with the employment of licensed members of the Bar, John Gagliardi some time ago decided to become his own attorney and to file and prosecute his cases as a pro se litigant. In autumn of 1986, John Gagliardi filed a number of pro se lawsuits against certain defendants in the United States

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District Court for the Western District of Pennsylvania. The cases involved were Civil Actions No 86-1659, 86-1736, 86-1956, 86-1998, 86-2068, 86-2106, and 86-2293. Judge Ziegler dismissed all the cases involved, and at case No 86-1998, the District Court also entered an order containing the following provision:

IT IS FURTHER ORDERED that the Clerk of Courts for the United States District Court for the Western District of Pennsylvania be and hereby is enjoined from filing or causing to be filed any complaint or other paper from John Gagliardi or of any known associate of John Gagliardi without first forwarding said paper to this court and obtaining approval from the undersigned.

This order of Judge Ziegler was entered without notice of any kind to John Gagliardi and with no opportunity to respond, to present a defense, or to even be aware of the pendency of the impending



sanction. Judge Ziegler thus with the stroke of a pen deprived John Gagliardi of his very important right to access to the courts.<sup>1</sup> John Gagliardi appealed the decision of Judge Ziegler to the United States Court of Appeals for the Third Circuit and the case was recently decided by that court in a per curiam opinion for publication, which petitioner is not aware of any citations to, in which the decision of Judge Ziegler was vacated because the actions of the Court in imposing such a harsh sanction were improper without notice and opportunity to be heard. A copy of the opinion of the Court of Appeals is attached to the appendix hereto.

Following the decision of Judge Ziegler to foreclose Gagliardi's access to the

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1. It is important to note that Gagliardi as a businessman would be potentially deeply prejudiced by the denial of access to the courts.





courts, Gagliardi filed the instant case against Judge Ziegler, seeking declaratory and injunctive relief against Judge Ziegler for depriving Gagliardi of his right to access to the Courts without due process of law. Jurisdiction at that time was proper in the Federal Courts as a result of the fact that Judge Ziegler is a Federal Judge, and the actions complained of had something to do with his judicial role. Judge Ziegler then immediately entered a memorandum opinion dismissing the case against him as frivolous, vexatious, and redundant, and as part of a pattern of frivolous, vexatious and redundant litigation.

In addition, Judge Ziegler, thinking that the appeals from his order foreclosing Gagliardi from access to the courts had been dismissed from a procedural default, declared that he was correct to dismiss as his actions were final and not subject to



review as a result of the law of the case doctrine. Judge Ziegler should not have been permitted to rule on the case as a result of operation of the provisions of 28 USC 455(b)(5)(i), which provides that he should disqualify himself in a case in which he was a party. In any event, Judge Ziegler would have been subject to a motion to disqualify at the moment Gagliardi discovered that Ziegler had been appointed as Judge of the case. Judge Ziegler decided to dispose of the case in complete and total violation of the relevant portions of federal law before Gagliardi would have the opportunity to react. It should be remembered that Judge Ziegler dismissed this case on March 3, 1987, when the case was only filed on March 2, 1987, one day prior to the dismissal. The best that could be said by Gagliardi was that most members of American society do not have their own personal Federal Judge. John Gagliardi has



his own Federal Judge, but he doesn't want him! Gagliardi is the victim of one Federal Judge who has decided to arrogate to himself each and every case filed in the Federal Courts by John Gagliardi. Judge Ziegler has been overturned on appeal in his continuous attacks on Gagliardi and on the First Amendment to the Constitution of the United States, yet he continues to personally insist on taking any case filed by John Gagliardi!

In the case at bar, while the United States Attorney for the Western District of Pennsylvania, who represented Ziegler on appeal, claimed that defendant was immune from suit; this defense of immunity was waived by the trial court in dismissing the complaint, who chose to proceed as though the case were subject to dismissal as something "frivolous" and as something subject to the Law of the Case Doctrine.



The argument concerning the law of the case doctrine has been defeated by the action of the United States Court of Appeals for the Third Circuit. Accordingly, since the judge has waived any immunity he had, the case was dismissed because it was found to be "frivolous". Since the meaning of the expression "frivolous" is something almost entirely subjective, it is certainly questionable for the Judge of the District Court to have dismissed a case as frivolous when he is the principal defendant!

The decision in the instant case was timely appealed to the United States Court of Appeals for the Third Circuit, and the decision of the District Court was affirmed by a judgment order without opinion. The Petition for rehearing en banc was also denied by the Court of Appeals without opinion. The case is now before the Supreme Court for final review.

The following is a list of the names of the persons who have been elected to the office of the President of the United States, and the names of the persons who have been elected to the office of the Vice President of the United States, in the year 1800.

1. John Adams, President of the United States.

2. Thomas Jefferson, Vice President of the United States.

3. James Madison, Secretary of the United States.

4. Alexander Hamilton, Secretary of the United States.

5. George Clinton, Secretary of the United States.

6. John Jay, Secretary of the United States.

7. John Rutledge, Secretary of the United States.

8. John Pickens, Secretary of the United States.

9. John Mifflin, Secretary of the United States.

10. John B. Howard, Secretary of the United States.

The following is a list of the names of the persons who have been elected to the office of the President of the United States, and the names of the persons who have been elected to the office of the Vice President of the United States, in the year 1800.

1. John Adams, President of the United States.

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5. George Clinton, Secretary of the United States.

6. John Jay, Secretary of the United States.

7. John Rutledge, Secretary of the United States.

8. John Pickens, Secretary of the United States.

9. John Mifflin, Secretary of the United States.

10. John B. Howard, Secretary of the United States.



REASONS ADVANCED IN SUPPORT

OF GRANTING THE WRIT

The most telling reason for the Court to grant certiorari in this case and hear the arguments of the parties is in the interest of protecting the integrity of the judicial system. As the Justices must be aware, the courts have been open to constant and biting criticism in recent years from a variety of sources. The main reason for the criticism of the courts is that the courts all too often produce anomalous results and at least in the perception of the public seem to protect the vested interests of institutions rather than the people of the country. There are constant allegations of impropriety which want of

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The New York Public Library, Astor Lenox Tilden Foundation, is a not-for-profit corporation organized under the laws of the State of New York. It is a successor to the New York City Library, which was established in 1808. The Library is a public institution, and its collections are open to all. The Library's collections include books, manuscripts, and other materials. The Library's collections are maintained in accordance with the highest standards of library practice. The Library's collections are available to the public through its various branches and reading rooms. The Library's collections are also available to the public through its online catalog. The Library's collections are a valuable resource for the public, and they are maintained in accordance with the highest standards of library practice. The Library's collections are available to the public through its various branches and reading rooms. The Library's collections are also available to the public through its online catalog. The Library's collections are a valuable resource for the public, and they are maintained in accordance with the highest standards of library practice.

answers.

This case cries out for intervention. It is one of the fundamental aspects of due process of law that the courts be impartial. The appearance of partiality is anathema to the integrity of the judicial system, because partiality undermines the very foundations on which the system of justice is built.

JUDGE ZIEGLER'S HANDLING OF THE CASE  
IS A PER SE VIOLATION OF 28 USC 455

28 USC 455(b)(5) provides:

He shall also disqualify himself in the following circumstances: (5) He or his spouse, or a person within the third degree of



relationship to either of them, or the spouse of such a person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party;

In this case, Judge Ziegler was the lead and principal defendant in the case. The only other defendant was Catherine Martrano, the Clerk of the United States District Court for the Western District of Pennsylvania, and Ms. Martrano was named a defendant as a result of her enforcement of the order of the judge. There were no other defendants, and the case dealt only with the activity of Judge Ziegler in ordering John Gagliardi barred from the courts. Thus, it cannot be argued, as was advanced by the attorneys for Judge Ziegler on the appeal, that the suit was an attempt to force the judge to recuse himself and would thus interfere with the rights of others.



Such was simply not the case, because, for practical purposes, no one else was involved.

A judge cannot act on his own case, Ely Valley Mines, Inc v Lee, 385 F2d 188(1967). The reasons for this conclusion are basic and fundamental to our system of jurisprudence, and are based on essential principals of fairness.

In this case, Judge Ziegler not only ruled on the case; he also made sure that he personally disposed of the case before anyone else had the opportunity to do anything about it, including the Plaintiff, who would have inevitably requested a disqualification. Further, it is important to examine the reasons advanced by Judge Ziegler in support of his dismissal of the complaint: Judge Ziegler stated that the suit was barred by application of the Law





of the Case doctrine. Since the Court of Appeals has vacated Judge Ziegler's underlying opinion, that is no longer the case, if ever it was. Finally, the only other reason advanced by Judge Ziegler in support of the dismissal was that the complaint was frivolous.

Since the word frivolous is an easy one to apply and is not burdened with objective standards, it makes the decision of Judge Ziegler more suspect because it is based entirely on the judge's subjective interpretation of the complaint. Such a subjective interpretation is particularly subject to reasonable questions concerning the fairness and objectivity of the court. In this manner, the conduct of the judge in ruling on the case becomes a violation of 28 USC 455(a). The question of whether the complaint was frivolous or not is not an issue at this point, but it seems very



clear that if the complaint were frivolous in reality, there would have been no reason for Judge Ziegler to arrogate to himself the job of hearing the case and dismissing it.

### IMPORTANCE OF QUESTIONS INVOLVED

It is submitted that the Court should grant the writ of certiorari in this case to review the matter for several reasons: First, the Court of Appeals determined not to make any definitive statement concerning the reasons for its judgment and the denial of the Petition for Rehearing. This case is one involving a question of the application of Federal Law which has hardly ever been encountered, in part, because the answer appears so obvious. The integrity of the judiciary requires that the Supreme Court deal with the case.



CONCLUSION

For the reasons advanced herein,  
Petitioner respectfully requests your  
honorable Court issue the writ of  
certiorari.

Respectfully submitted

*John Gagliardi*

J o h n

Gagliardi



# BEST AVAILABLE COPY

## CERTIFICATE OF SERVICE

I certify that I have on this date served the proper number of copies of the Petition and appendix on the person and at the address set forth below by First Class Mail, prepaid:

Paul Brysh, Esq.

U.S. Attorney's Office

633 US P.O. & Court House

Pittsburgh, PA 15219

Dated 12-12-87

Also served on:

*Solicitor-General of the United States  
U.S. Department of Justice  
Washington, D.C. 20530*

*John Gagliardi*

Date 12/28/87

*John Gagliardi*

Subscribed and sworn to before me this 28th day of Dec 1987  
by John Gagliardi

*Theresa A. Ciolli*

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**APPENDIX TO PETITION**

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### A. EXPLANATORY REMARKS

This Appendix contains the orders from the United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit which were issued in the case of John Gagliardi v Donald E. Ziegler and Catherine Martrano, which was Civil Action 87-490 in the District Court and No 87-3180 in the United States Court of Appeals for the Third Circuit. The memorandum opinion of the District Court contains references to other cases in the District Court. Those cases are not the cases on appeal in the Supreme Court. The cases cited are other cases filed by the Petitioner, John Gagliardi, involving different litigants and different questions. All were disposed of or assigned to Judge Ziegler.

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Since that time, Judge Ziegler has entered an order recusing himself from all cases involving Petitioner John Gagliardi, which would seem to indicate that this case should be remanded for assignment of another trial judge.

**ITEM 1. OPINION OF DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN GAGLIARDI,                     )  
    PLAINTIFF

vs                                     ) No 87-490

DONALD E. ZIEGLER,  
CATHERINE MARTRANO,         )  
    DEFENDANTS

**MEMORANDUM OPINION**

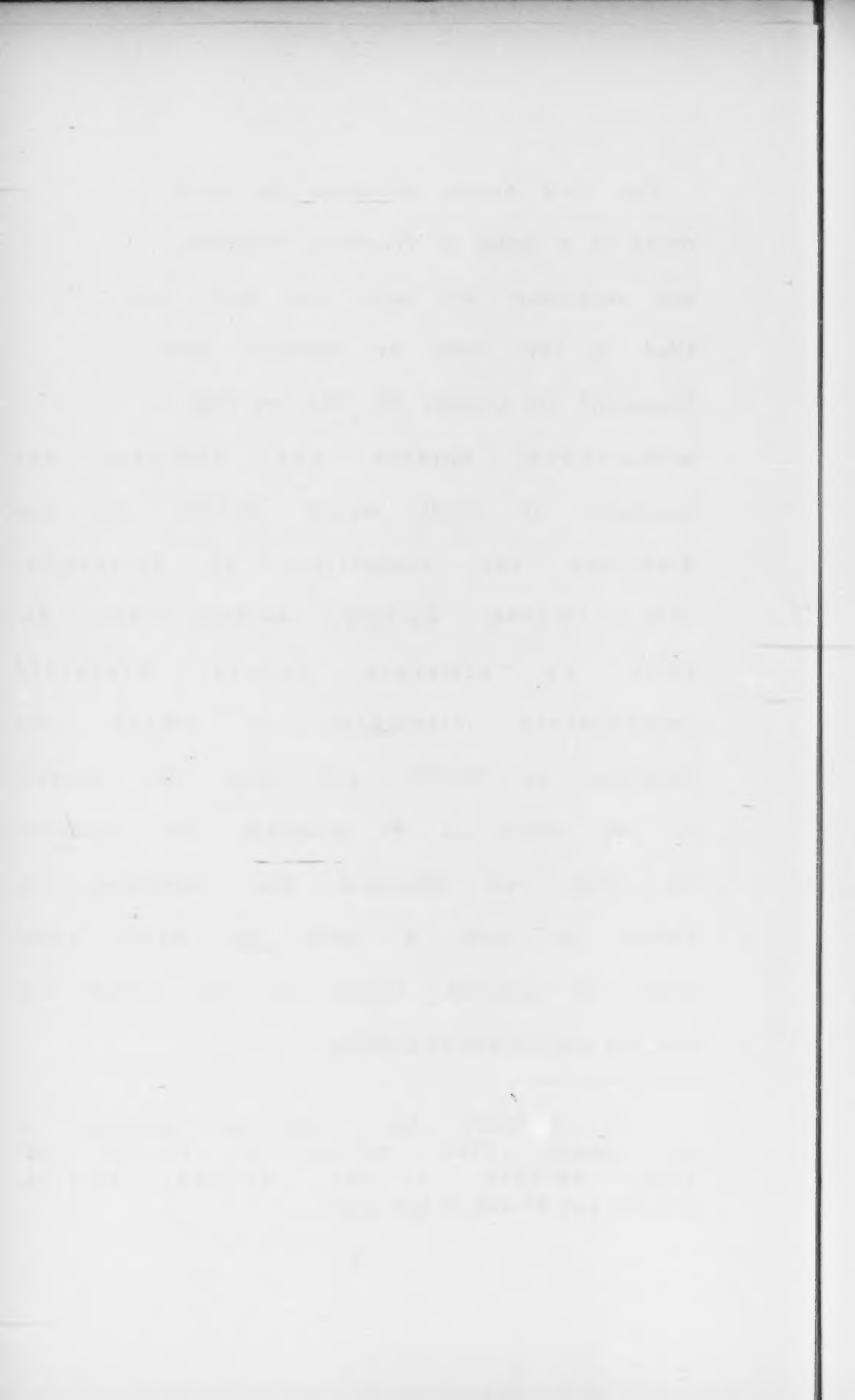
**ZIEGLER, DISTRICT JUDGE**



This civil Action represents the latest round in a series of frivolous, vexatious, and redundant law suits that have been filed in this court by plaintiff, John Gagliardi<sup>1</sup>. On October 30, 1986, we filed a memorandum opinion and dismissed the complaint at Civil Action 86-1998. We also dismissed the complaints at 86-1659, 86-1736, 86-1956, 86-2068, 86-2106, and 86-2293 by separate orders. Plaintiff immediately attempted to amend the complaint at 86-2293 and name this member of the court as a defendant. On November 10, 1986, we dismissed that complaint for failure to state a claim on which relief could be granted. Copies of the orders are attached and marked as exhibits.

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<sup>1</sup>. Plaintiff has filed or pending, or on appeal, Civil Actions at 86-1659, 86-1736, 86-1956, 86-1998, 86-2068, 86-2106, 86-2293, and 87-490, at last count.





Plaintiff took appeals to the United States Court of Appeals<sup>2</sup> and, when Plaintiff failed to timely prosecute at 86-1956, the appellate court dismissed the appeal.

The instant complaint contains a repetition of the issues which plaintiff is advancing on appeal at Civil Action 86-2293, except that palintiff has added the Clerk of Court as a defendant for following the order of this court dated October 30, 1986. The order of this court at 86-2293 represents the law of the case until the Court of Appeals determines otherwise, and therefore the complaint will be dismissed for redundancy. A party may not relitigate issues previously resolved at his or her whim. Indeed, the instant complaint makes

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<sup>2</sup>. Plaintiff did not appeal the judgments at 86-1659 and 86-1736.

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clear that our order of October 30, 1987  
was sound.

A written order will follow.

Dated March 3, 1987

S/Donald E. Ziegler

**ITEM 2: JUDGMENT ORDER OF THE COURT OF  
APPEALS**

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

---

No 87-3180

---

**JOHN GAGLIARDI  
APPELLANT**

vs

**JUDGE DONALD E. ZIEGLER  
AND CATHERINE MARTRANO**

---

Appeal from the United States District  
Court for the Western District of  
Pennsylvania-Pittsburgh(D.C. Civil Action

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No 87-00490) District Judge: Honorable  
Donald E. Ziegler.

Submitted under Third Circuit Rule 12(6)  
July 9, 1987

Before: HIGGINBOTHAM, SLOVITER, and Van  
DUSEN, Circuit Judges

---

JUDGMENT ORDER

After consideration of all contentions  
raised by appellant, it is

ADJUDGED AND ORDERED that the judgment  
of the district court be and hereby is  
AFFIRMED.

Costs taxed against appellant.

BY THE COURT

S/HIGGINBOTHAM, J.

3. ITEM 3. ORDER SUR REHEARING

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No 87-3180

---

JOHN GAGLIARDI  
APPELLANT

vs

JUDGE DONALD E. ZIEGLER  
AND CATHERINE MARTRANO

---

Appeal from the United States District  
Court for the Western District of  
Pennsylvania-Pittsburgh(D.C. Civil Action  
No 87-00490) District Judge: Honorable  
Donald E. Ziegler.

---

SUR PETITION FOR REHEARING

---

Present: GIBBONS, Chief Judge, SEITZ,  
WEIS, HIGGINBOTHAM, SLOVITER, BECKER,  
STAPLETON, MANSMANN, GREENBERG, and VAN  
DUSEN, Circuit Judges.

The petition for rehearing filed by  
appellant in the above-entitled case having  
been submitted to the judges who  
participated in the decision of this court

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and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and by the Court en Banc, is hereby denied.

BY THE COURT

S/ HIGGINBOTHAM, J.